wrong. To what extent competition justifies, is a very debatable question of public policy. See 20 HARV. L. REV. 356 *et seq.* Clearly competition is no justification for falsehood.

EVIDENCE — ADMISSIONS — DECLARATIONS BY PREDECESSORS IN TITLE. — In an action of ejectment, involving a controversy over a boundary line not clearly described in the deeds, the defendant sought to introduce evidence of admissions made by the plaintiff's predecessors in title, to the effect that the boundary was as claimed by the defendant. *Held*, that parol admissions are competent only when possession, not ownership, is in issue. *Gilmartin* v. *Buchanan*, 119 N. Y. Supp. 489 (Sup. Ct., App. Div.). See NOTES, p. 397.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — DEBTOR AS PERSONAL REPRESENTATIVE OF DECEDENT. — The testator named as executors two debtors of his own. *Held*, that their obligations are to be deemed assets of the estate. *Wachsmuth* v. *Penn Mutual Life Ins. Co.*, 89 N. E. 787 (Ill.). See NOTES, p. 391.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — RIGHT TO RECOVER EXCESS PAYMENT FROM CREDITOR. — An administratrix, through negligence or mistake, paid the defendant a debt against the estate with estate funds. Later, the estate was declared insolvent and a *pro rata* payment of creditors was decreed. *Held*, that the administratrix can recover the payment in excess of the defendant's *pro rata* share. *Woodruff* v. *Claflin Co.*, 133 N. Y. App. Div. 874.

At common law the administrator's right of preference allowed him to pay one creditor in full, regardless of the others. *Lyttleton* v. *Cross*, 3 B. & C. 317, 322. As such a payment was properly made it could not later be recovered. A legacy, however, when paid before the estate was known to be insolvent could be recovered. Under the modern rule that creditors should be paid *pro rata*, the excess paid to one creditor is more analogous to the payment of a legacy than to the old preferential payment. *Walker* v. *Hill*, 17 Mass. 380. Accordingly, the administrator has been allowed to recover on the ground of a contract to refund implied by law, or of a mistake of fact. *Wolf* v. *Beaird*, 123 Ill. 585. A broader reason for recovery is that the preferred creditor has been unjustly enriched at the expense of other creditors. *Morris* v. *Porter*, 87 Me. 510. *Contra*, *Beardsley* v. *Marsteller*, 120 Ind. 319. Some courts deny recovery to a negligent administrator. *Lawson's Adm'rs* v. *Hansborough*, 10 B. Mon. (Ky.) 147. Others allow it even though the payment was tortious, reasoning that equity should encourage the administrator to right his wrong. *Clark* v. *Hougham*, 2 B. & C. 149. Such is the prevailing doctrine in the case of trustees. *Wetmore* v. *Porter*, 92 N. Y. 76. Were the defendant's real rights prejudiced, an exception might properly be made. *Brooking* v. *Farmers' Bank*, 83 Ky. 431. But where the defendant deserves only his proper *pro rata* share, the administrator should recover.

EXTRADITION — INTERSTATE EXTRADITION UNDER THE UNITED STATES CONSTITUTION — ABSOLUTENESS OF DUTY TO SURRENDER FUGITIVE FROM JUSTICE. — The Governor of Mississippi issued in due form to the Governor of Missouri a requisition for the arrest of the petitioner, a negro fugitive from justice. After being duly arrested, the petitioner sued out a writ of *habeas corpus*, on the ground that the race feeling in Mississippi would deprive him of a fair trial and of equal protection of the laws. *Held*, that he is not entitled to the writ, for the Governor of Missouri has a right to assume that the prisoner will be given a legal trial in Mississippi. *Marbles* v. *Creecy*, 30 Sup. Ct. 33.

The federal constitution provides for interstate extradition for all crimes. U. S. CONST. Art. 4, § 2, ¶ 2. And by statute it is made the duty of the executive

of the state to which the fugitive has fled to cause his arrest on demand. U. S. COMP. ST. (1901), § 5278. This duty is purely ministerial and permits of no discretion. *Ex parte Swearingen*, 13 S. C. 74. The governor has no authority to determine whether the charge is well founded. *People* v. *Byrnes*, 33 Hun (N. Y.) 98. And his duty to obey a requisition duly issued is absolute. *Johnston* v. *Riley*, 13 Ga. 97. But the surrender of a fugitive in actual custody on a criminal or civil charge may be postponed until the charge is satisfied. *Matter of Briscoe*, 51 How. Prac. (N. Y.) 422. That civil process has merely issued is not enough. *Ex parte Rosenblat*, 51 Cal. 285. And the governor has a right to surrender a fugitive, although already under arrest. *State* v. *Allen*, 21 Tenn. 258. But see *In re Opinion of the Justices*, 89 N. E. 174 (Mass.). This, however, is the extent of the governor's discretion. Yet it must be conceded that the general government cannot compel the performance of this duty of a state's officer. *Kentucky* v. *Dennison*, 24 How. (U. S.) 66. The right to require the surrender being clear, however, Congress undoubtedly has power to vest in any national officer the authority to arrest the fugitive. See *In the matter of Voorhees*, 32 N. J. L. 141, 146. The principal case rightly upholds the surrender; yet it might be criticized for failing to declare more unequivocably the absoluteness of the governor's duty.

FEDERAL COURTS — AUTHORITY OF STATE LAW — RULE OF PROPERTY. — The plaintiff sued in a federal circuit court to recover damages for a destruction of his surface land caused by the excavation of underlying coal previously deeded by the plaintiff to the defendants. After this suit was brought, the supreme court of the state wherein the land was situated and the cause of action arose, decided a similar case for the defendant. *Held*, that the Circuit Court of Appeals is not bound by the state decision. *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349.

The dissenting opinion of three judges seems to present the better view. For a discussion of the principles involved, see 23 HARV. L. REV. 139.

HIGHWAYS — RIGHTS AND REMEDIES OF ABUTTERS — EASEMENT OF LATERAL SUPPORT OF BUILDINGS. — A city built below a street a tunnel not for street purposes, thus causing the settling of the walls of the house of an abutter who did not own the fee of the street. For this damage an award was made under a statute authorizing the condemnation of all necessary real estate and rights, interests, and easements therein. *Held*, that the abutter is entitled to the award. *Matter of the Board of Rapid Transit Railroad Commissioners of the City of New York*, 42 N. Y. L. J. 1305 (N. Y., Ct. App., Dec. 17, 1909).

There is no natural right to lateral support for buildings whose weight increases the lateral pressure. *Thurston* v. *Hancock*, 12 Mass. 220. Nor can an easement for such support be acquired, in this country, by prescription. *Richart* v. *Scott*, 7 Watts (Pa.) 460. Since the beneficial use of land would otherwise be hampered a grant of an easement of lateral support should not be implied between private landowners. *Contra*, *Stevenson* v. *Wallace*, 27 Gratt. (Va.) 77. Such is the usual holding as to implied grants of the easements of light and air; and there is no valid ground for applying a different rule to cases of lateral support. *Keats* v. *Hugo*, 115 Mass. 204. *Contra*, *Janes* v. *Jenkins*, 34 Md. 1. The principal case extends to easements of the latter class the well established exception that easements of light and air, subject to interference for street purposes, are impliedly granted to an abutter whenever the title to the street is separated from that to the abutting land. *Adams* v. *Chicago, Burlington, & Northern Railroad Co.*, 39 Minn. 286; *Abendroth* v. *The Manhattan Railway Co.*, 122 N. Y. 1. It is submitted that this exception should not be extended to lateral support; for it cannot be said that furnishing lateral support to abutting buildings is, like supplying them with light, air, and access, the function of a highway. But *cf.* *Donahue* v. *Keystone Gas Co.*, 181 N. Y. 313.